STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROMANDO DESHONE SMITH,

Defendant-Appellant.

UNPUBLISHED
February 19, 2004

No. 245098
Kalamazoo Circuit Court
LC No. 02-001097-FC

Before: Murray, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appeals as of right. We affirm.

I. Facts

Defendant's convictions arise from a robbery that took place in September 2001, and a shooting that followed three months later, both in Kalamazoo.

The complaining witness testified that in late September 2001, defendant and two others, all three of whom were armed, robbed him. The complainant elaborated that his assailants displayed their firearms then, without otherwise expressing any demands, took money from his pocket. The complainant explained that he declined to call the police, because "I knew the people that had robbed me and I . . . figured they would eventually take care of theyself," adding, "[a]t first I was mad and I wanted to get on top of them myself, but I had time to think."

The complainant further testified that, in the following December, defendant and "Little George" mocked him, apparently over his submission to the robbery, causing the complainant to resolve to "whoop his ass," referring to Little George. The complainant afterward seized his first opportunity to strike Little George, and after the ensuing scuffle, he spotted defendant and left the scene for home in his car. However, according to the complainant, soon after parking his car, he saw defendant and Little George approaching. The complainant testified that he headed for his apartment, but when he got there, defendant was shooting. Asked to elaborate, the

complainant stated that "I was going to get in, but I didn't make it. When I got to like my porch, . . . there was shooting, bam bam, bam, bam," from about thirty or forty feet away. The complainant identified defendant as the shooter. The complainant recounted falling to the ground and hearing additional shots. The complainant described his injuries as two gunshot wounds "and a graze on my wrist," elaborating that one shot was in the left side of his back and the other was on his right.

The emergency-room resident who treated the complainant confirmed that in December 2001, the latter presented with an entry and exit wound to the thigh, plus a wound to the back corresponding to a bullet in the chest.

Defendant was charged in connection with both incidents, opted for a bench trial, and was convicted as charged.

II. Sufficiency of the Evidence

Defendant challenges the sufficiency of the evidence identifying him as one of the robbers in the earlier incident, and establishing his intent to commit murder in the latter one.

When reviewing the sufficiency of evidence in a criminal case, a reviewing court must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994); *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). This inquiry presents a question of law, calling for review de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002).

A. Armed Robbery

Defendant acknowledges that the complainant plainly identified him as among those who robbed him in September 2001. However, defendant points out that the complainant testified that he was approached by three armed robbers, and that they took money from him without speaking, and protests that another eyewitness testified that there were only two assailants, only one of whom was armed, but both of whom gave the complainant verbal commands. Defendant additionally cites scanty authority for the proposition that eyewitness identification is not always reliable. These arguments are unavailing.

"Credibility is a matter for the trier of fact to ascertain. We will not resolve it anew." *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990)(citation omitted). Moreover, all conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). We are not about to rule, as a matter of law, that a factfinder may not choose to believe one witness' identification testimony, and come to a legally sound conclusion on the basis of it, even where contradicted by others. The accounts of a single witness can suffice to persuade a jury of a defendant's guilt beyond a reasonable doubt. See *People v Jelks*, 33 Mich App 425, 432-433; 190 NW2d 291 (1971). Even where the witnesses'

identification of the defendant is less than positive, the question remains one for the trier of fact. *People v Abernathy*, 39 Mich App 5, 7; 197 NW2d 106 (1972). In this case, the complainant's unequivocal identification of defendant as among the armed persons who robbed him on the occasion in question was sufficient to support the trial court's finding in that regard.

B. Assault with Intent to Commit Murder

Defendant challenges his conviction of assault with intent to commit murder solely on the ground that the evidence was not sufficient to prove intent. We disagree.

The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). "An actor's intent may be inferred from all of the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *Fetterley*, *supra* at 517-518 (citations omitted). The weaponry used in a crime can constitute evidence of both preparation and intent. See *People v Miner*, 22 Mich App 673, 676; 177 NW2d 719 (1970). Evidence of the injuries inflicted is also probative of an intent to kill. *People v Mills*, 450 Mich 61, 71; 537 NW2d 909 (1995), mod on other grounds 450 Mich 1212 (1995).

In this case, the complainant's plain account of defendant firing several shots in his direction, and the evidence establishing that the complainant was injured by two bullets, one of which struck the chest through the back, well supports the trial court's conclusion that defendant acted with a specific intent to kill.

Again, defendant protests that another eyewitness' testimony contradicted that of defendant in certain respects, so again we state that we defer to the trier of fact to resolve credibility contests. *Vaughn*, *supra* at 380. And all conflicts in the evidence must be resolved in favor of the prosecution. *Terry*, *supra* at 452.

Defendant further points out that the complainant did not provide perfectly consistent accounts himself throughout the course of the investigation and trial, and that ballistics analysis at first identified a caliber of bullet that did not agree with the four shell casings found where the complainant fell. Defendant further suggests that those four casings were expelled from a semiautomatic weapon that the complainant had fired.

Defendant "vehemently denies participation in the shooting," yet lapses into a self-defense argument on appeal. Defendant similarly suggests for the first time on appeal that this may have been an intentional shooting in response to sufficient provocation as to constitute manslaughter instead of murder. The incongruity between denying the shooting while asserting that the shooting was justified is plain on its face. Defendant chose to maintain at trial that he did not participate in the shooting. Regardless, as defendant notes in his appellate brief, the assault and attempted killing must occur under circumstances which, had the victim been killed, would constitute murder. The complainant's testimony, however, indicates that defendant was not provoked or justified with respect to the shooting, and the complainant was shot in the back. Because we view the evidence in a light most favorable to the prosecution, with credibility issues reserved for the trier of fact, and because all conflicts in the evidence are to be resolved in favor

of the prosecution, we find that there was sufficient evidence to support a finding that, had defendant killed the complainant as intended, the killing would have constituted murder.

Affirmed.

/s/ Christopher M. Murray
/s/ William B. Murphy
/s/ Jane E. Markey